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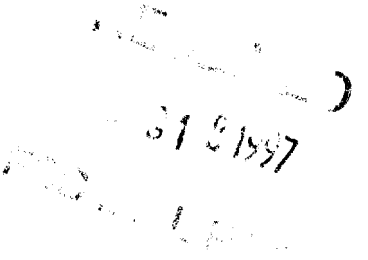

Mr. William F. Caton
Office of the Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Re: CC Docket No. 97-146

Dear Mr. Caton:

Enclosed for filing please find an original plus sixteen (16) copies of the Comments of Frontier Corporation in the above-docketed proceeding.

To acknowledge receipt, please affix an appropriate notation to the copy of this letter provided herewith for that purpose and return same to the undersigned in the enclosed, self-addressed envelope.

Very truly yours,

Michael J. Shortley, III

cc: Competitive Pricing Division (2)

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

Complete Detariffing for Competitive Access Providers and Competitive Local Exchange Carriers	))))	**CC Docket No. 97-146**

COMMENTS OF
FRONTIER CORPORATION

Frontier Corporation ("Frontier") submits these comments in response to the Commission's Notice initiating this proceeding.[1] In the Notice, the Commission proposes to adopt a mandatory detariffing regime for interstate exchange access services offered by competitive local exchange carriers ("CLECs").[2]

The Commission is wandering into dangerous territory. It previously adopted a mandatory detariffing regime for interexchange carriers.[3] The D.C. Circuit, however, stayed that order pending review,[4] thus raising substantial questions as to the Commission's legal authority to adopt a mandatory detariffing

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1 *Complete Detariffing for Competitive Access Providers and Competitive Local Exchange Carriers*, CC Dkt. 97-146, Memorandum Opinion and Order and Notice of Proposed Rulemaking. FCC 97-219 (June 18, 1997) ("Notice").

2 Notice, ¶ 34.

3 *Policy and Rules Concerning the Interstate, Interexchange Marketplace*, CC Dkt. 96-61, Second Report and Order, 11 FCC Rcd. 20730 (1996).

4 *MCI Telecommunications Corp. v. FCC*, No. 96-1459, Order (D.C. Cir. Feb. 13, 1997).

regime. On this basis alone, the Commission should decline to adopt a mandatory detariffing policy.[5]

Moreover, the justifications enunciated by the Commission for adopting mandatory detariffing -- eliminating reliance on the filed rate doctrine, lessening the likelihood of collusion and the like[6] -- have previously been addressed at length by Frontier and found wanting.[7] The reasons set forth by Frontier for not adopting a mandatory detariffing for interstate services offered by interexchange carriers apply equally with respect to interstate access services offered by CLECs. Frontier attaches its previously-filed petition for reconsideration hereto and incorporates into this proceeding the arguments contained therein by reference.

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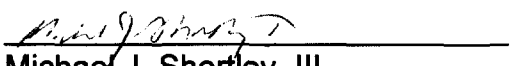
5 Frontier has no objection to a permissive detariffing policy, under which the Commission would provide CLECs with the option of filing interstate access tariffs.

6 Notice, ¶ 34.

7 *See Policy and Rules Concerning the Interstate, Interexchange Marketplace*, CC Dkt. 96-61, Petition for Reconsideration (Dec. 20, 1996).

For the foregoing reasons, the Commission should decline to adopt its mandatory detariffing proposal for interstate access services offered by the CLECs.

Respectfully submitted,



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August 15, 1997

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Policy and Rules Concerning the Interstate, Interexchange Marketplace	)	**CC Docket No. 96-61**
	)	
	)	
Implementation of Section 254(g) of the Communications Act of 1934, as Amended	)	

PETITION FOR RECONSIDERATION

Michael J. Shortley, III

Attorney for Frontier Corporation

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December 20, 1996

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Summary

Frontier[1] submits this petition for reconsideration of the Commission's Second Report and Order in the above-docketed proceeding. In the Second Report, the Commission prohibited non-dominant interexchange carriers from filing tariffs governing the terms and conditions under which they provide domestic interstate services, effective September 23, 1997. Frontier respectfully submits that the reasons that the Commission articulated to justify its forbearance policy -- the removal of regulatory impediments to competition and elimination of the filed-rate doctrine -- fail to withstand scrutiny. The Commission also understated the costs of compliance with the Commission's mandatory forbearance policy. In short, the Commission misjudged the benefits and costs associated with mandatory tariff forbearance and should reconsider its decision adopting such a regime. Upon reconsideration, the Commission should substitute a permissive detariffing policy -- under which non-dominant interexchange carriers could elect, but would not be required, to file tariffs for domestic interstate services.

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1 The abbreviations used in this summary are defined in the text.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Policy and Rules Concerning the Interstate, Interexchange Marketplace	)	**CC Docket No. 96-61**
	)	
	)	
Implementation of Section 254(g) of the Communications Act of 1934, as Amended	)	

PETITION FOR RECONSIDERATION

Introduction

Frontier Corporation ("Frontier") submits this petition for reconsideration of the Commission's Second Report and Order in the above-docketed proceeding.[1] In the Second Report, the Commission prohibited non-dominant interexchange carriers from filing tariffs governing the terms and conditions under which they provide domestic interstate services, effective September 23, 1997.[2] Frontier respectfully submits that the reasons that the Commission articulated to justify its forbearance policy -- the removal of regulatory impediments to competition[3] and

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1 *Policy and Rules Concerning the Interstate Interexchange Marketplace*, CC Dkt. 96-61, Second Report and Order, FCC 96-424, (Oct. 31, 1996) ("Second Report"). The Second Report was published in the Federal Register on November 22, 1996. *See* 61 FR 59340.

2 Second Report, ¶ 89.

In addition, the Commission prohibited non-dominant interexchange carriers from filing revisions to existing or adding new long-term specialized arrangements after December 23, 1996. *Id.*, ¶ 90.

The Commission deferred, to another proceeding, the question of whether non-dominant interexchange carriers must -- or, indeed, may -- file tariffs governing their international services. *Id.* ¶ 98.

3 *Id.*, ¶ 53.

elimination of the filed-rate doctrine[4] -- fail to withstand scrutiny. The Commission also understated the costs of compliance with the Commission's mandatory forbearance policy. In short, the Commission misjudged the benefits and costs associated with mandatory tariff forbearance and should reconsider its decision adopting such a regime. Upon reconsideration, the Commission should substitute a permissive detariffing policy -- under which non-dominant interexchange carriers could elect, but would not be required, to file tariffs for domestic interstate services.[5]

Argument

I. THE COMMISSION HAS OVERSTATED THE BENEFITS ASSOCIATED WITH ITS MANDATORY FORBEARANCE REGIME.

The Commission posits two benefits that should flow from its mandatory forbearance regime -- the removal of regulatory impediments to competition and elimination of the filed-rate doctrine. Both are largely illusory.

A. The Current Tariff-Filing Regime Does Not Inhibit Competition.

The Commission stated that:

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4 *Id.*, ¶ 55.

5 In the event that the Commission declines to modify the Second Report and Order, it should clearly articulate the standards to which it expects carriers to conform to comply with the just, reasonable and non-discrimination provisions of sections 201 and 202 of the Communications Act. In the absence of a tariffing regime -- under which carriers have some, albeit incomplete, assurance that an effective tariff is lawful -- carriers should not be left without guidance from the Commission as to the standards by which it will judge carriers' conduct. The Commission, at a minimum, should affirmatively declare it expects carriers to treat similarly-situated customers similarly.

> Even under the permissive existing streamlined tariff filing procedures, requiring non-dominant interexchange carriers to file tariffs for interstate, domestic, interexchange services impedes vigorous competition in the market for such services by: (1) removing incentives for competitive price discounting; (2) reducing or taking away carriers' ability to make rapid, efficient responses to changes in cost and demand; (3) imposing new costs on carriers that attempt to make new offerings; and (4) preventing consumers from seeking out or obtaining service arrangements specifically tailored to their needs.[6]

With all due respect, the Commission erred in each respect. It is important to place into context the alleged benefits from mandatory forbearance against the current regime. Today, non-dominant interexchange carriers may file tariff revisions on *one days'* notice. Such tariff revisions are presumed reasonable and, indeed to Frontier's knowledge, only one tariff filed by a non-dominant interexchange carrier has ever been rejected.[7] In comparison with the current regime, the Commission's mandatory forbearance policy offers few benefits.

First, the existing regime demonstrably does not discourage competitive price discounting. Such discounting is prevalent today, particularly for medium and high-end customers, as witnessed by the numerous specialized

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6 *Id.*, ¶ 53.

The Commission also notes that a mandatory forbearance regime will help eliminate tacit price coordination, to the extent that it exists at all. *Id.* Frontier addressed this issue in Part III, *infra*.

7 *See Capital Network Systems, Inc., Tariff F.C.C. No. 2, Trans. No. 1*, Memorandum Opinion and Order, 6 FCC Rcd. 5609 (Com. Car. Bur. 1991), *on review*, 7 FCC Rcd. 8092 (1992).

arrangements that are on file with the Commission.[8] It strains credulity to suggest that elimination of a one-day tariff filing requirement could substantially increase incentives for competitive price discounting.

Second, a one-day tariff filing requirement cannot rationally be related to an impediment to rapid responses to changes in costs or demand. Tariff filings by non-dominant interexchange carriers today need not be accompanied by supporting cost or demand information. As such, the current regime does not even contain the potential that a carrier may be forced to disclose commercially sensitive information. Moreover, because such filings may be made on one day's notice, they cannot provide competing carriers with the advance notice necessary for such carriers to file preemptive, competitive responses.[9] Thus, there is no logical basis for the Commission's conclusion in this regard.

Third, the Commission is correct that the tariff filing requirement does impose costs on non-dominant interexchange carriers. The major cost that immediately comes to mind is the current tariff filing fee. The Commission can address this concern far more directly by reducing drastically the current tariff

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8 Moreover, the Commission's conclusion is inconsistent with its decision to reclassify AT&T as non-dominant. The Commission reclassified AT&T as non-dominant as a result of its finding that the domestic, interexchange market is characterized by substantial competition. *See Motion of AT&T Corp. To Be Reclassified as a Nondominant Carrier*, Order, 11 FCC Rcd. 3271 (1995), *recon. pending*.

9 Indeed, the existence of tariff filings by non-dominant interexchange carriers are typically not even discovered by their competitors until after they have already become effective.

filing fee for non-dominant carriers.[10] Moreover, this rationale ignores the substantial costs that the Commission's mandatory forbearance policy would impose.[11]

Fourth, the existing regime does not discourage consumers from seeking out or obtaining specialized arrangements that meet their needs. The sheer volume of specialized arrangements on file with the Commission attests to this fact. To the extent that individual carriers may be unwilling to enter into individualized arrangements with specific customers, that results -- not from the existing regulatory process -- but from the carrier's unwillingness to assume the economic risk of the arrangement that the individual customer desires.[12] The existence -- or lack thereof -- of a streamlined tariff filing regime has no effect on this basic economic incentive.

B. The Filed-Rate Doctrine Is Beneficial to Consumers.

The Commission believes that the filed-rate doctrine and the ability to limit damages through tariff provisions are detrimental to consumers.[13] The opposite, in fact, is true. The ability to tariff a service -- or at least the terms and conditions

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10 The filing fee is, in theory, related to the costs that the Commission may incur in processing such filings. With respect to tariff filings by non-dominant interexchange carriers, these costs are minimal. The tariffs are presumed lawful and are not investigated absent a compelling reason to do so.

11 *See* Part II, *infra*.

12 Moreover, if one carrier is unwilling to accommodate the request of a particular customer, that customer may always seek other carriers that may be willing to meet its needs.

13 Second Report, ¶ 55.

(if not the rates) under which a service is offered -- promotes certainty in the carrier-customer relationship. Both parties will know, in advance, the basic terms and conditions under which they will deal with each other. Particularly in an industry where services are received in advance of payment (or a binding contract for the payment for such services), this certainty is conducive to ordinary commercial relationships.[14]

The Commission expresses legitimate concern that carriers may attempt unilaterally to abrogate the terms and conditions of long-term, specialized arrangements.[15] The Commission, however, already has policies in place to address this issue. As the Commission concedes, carriers may not unilaterally abrogate long-term, arrangements through tariff amendments absent substantial cause.[16] Pre-existing policy already addresses the Commission's concern in this regard.

The Commission's parallel concern -- that carriers may attempt unilaterally to limit damage exposure[17] -- provides no rationale for adopting a mandatory forbearance policy. Carriers will limit their liability -- in ways that are typical in

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14 This fact -- which distinguishes today's regulated industries (telecommunications, energy) from virtually all others -- makes some tariffing requirement socially desirable. Terms and conditions under which service will be provided re known in advance, thereby promoting stability in the carrier-customer relationship.

15 *See id.*

16 *See, e.g., RCA American Communications, Inc., Revisions to Tariffs F.C.C. Nos. 1 and 2*, CC Dkt. 80-766, Memorandum Opinion and Order, 84 FCC 2d 353, 358-59 (1980).

17 Second Report, ¶ 55.

contractual arrangements -- regardless of whether they are permitted to file tariffs. At least in Frontier's case -- if not every other carrier's case -- its general rate levels are absolutely predicated upon the assumption that its liability is limited as currently set forth in its tariffs. Even in the absence of tariff protection, Frontier would *not* agree to expose itself to a greater risk of liability in the absence of enormous increases in the rates that it charges to cover that risk. The question is not, as the Commission apparently perceives, the issue of limitation of liability. The real question reduces to the price at which the risk of greater liability is assumed.

II. THE COMMISSION HAS UNDERSTATED THE COSTS ASSOCIATED WITH ITS MANDATORY FORBEARANCE POLICY.

The Commission discounts beyond all reasonable measure the costs associated with its mandatory forbearance regime.[18] In the absence of tariffs, carriers will need to enter into discrete contractual relationships with virtually every individual end-user customer. That circumstance alone will require substantial changes to current operations and procedures. The development and dissemination of "short, standard contracts"[19] is not as costless as the Commission assumes. In particular, the dissemination and collection of

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[18] *Id.*, ¶¶ 56-58.

[19] *Id.*, ¶ 57.

The Commission's assertion that such contracts would be short is demonstrably incorrect. The contracts would need to contain all of the essential terms and conditions currently found in tariffs.

contracts signed by individual customers is a time-consuming and cumbersome process, particularly because the Commission has required that such contracts be available for public inspection and production to the Commission.[20]

In addition, completely aside from the costs of converting from a tariff-based to a contract-based regime, the cost savings that the Commission envisions from mandatory forbearance for domestic, interexchange service will not materialize. Carriers will still be required to file tariffs for international and, in many jurisdictions, intrastate services. A major portion of a carrier's tariff administration responsibilities will still remain. Thus, the Commission's mandatory forbearance policy will actually increase costs that will necessarily be borne by customers of domestic, interstate, interexchange services.

Moreover, such a regime could upset the current presubscription process in that, for contract law purposes, it would require carriers to obtain signed contracts -- not only for new but also for existing customers that would have a contractual relationship with the customer. Absent a signed contract, carriers may be reluctant to convert customers to their services. Consumers will thereby be disadvantaged by not being able to change interexchange carriers with little inconvenience. This result would run directly contrary to the Commission's decisions to retain flexibility in the carrier selection process.[21]

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20 *Id.*, ¶¶ 84-87.

21 *See generally Policies and Rules Concerning Changing Long Distance Carriers*, CC Dkt. 91-64, Report and Order, 7 FCC Rcd. 1038 (1992), *recon.*, 8 FCC Rcd. 3215 (1993).

With respect to customers that have no pre-existing contractual relationship (*e.g.*, casual calling and pre-paid calling card customers), there may exist no effective way to enforce the actual terms of the bargain. Despite the Commission's protestations to the contrary,[22] in the absence of tariffing at least terms and conditions, there is no guarantee that a carrier could offer such services on a contractually binding basis.[23]

III. PERMISSIVE DETARIFFING WOULD ACHIEVE THE COMMISSION'S GOALS MORE EFFECTIVELY THAN MANDATORY FORBEARANCE.

To the extent that the benefits identified by the Commission are more than illusory, a permissive detariffing regime -- under which non-dominant interexchange carriers would be permitted, but not required, to file tariffs -- would more effectively achieve these goals. Such a policy would avoid the costs associated with mandatory forbearance identified above. It would also permit non-dominant interexchange carriers to tailor a regulatory regime that best meets their needs and those of their customers.[24]

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22 Second Report, ¶ 58.

23 The Commission posits that the use of such services could trigger an obligation under a contract implied-in-fact theory. *Id.* While Frontier agrees that this would be the case, it would likely take repetitive litigation to prove the point. This would result in yet another cost that would be passed on to consumers.

24 Frontier agrees that Congress did not establish a tariffing regime to benefit carriers. However, what the Commission failed adequately to consider are the substantial consumer benefits -- *e.g.*, having the terms of the relationship stable and known in advance (see Part II *supra*) -- that some form of tariffing regime would engender.

The major reason identified by the Commission for not adopting a permissive detariffing regime -- that such a regime could possibly facilitate tacit price collusion[25] -- is weak, at best. In the first instance, the Commission could not even conclude that tacit price collusion exists, even under a mandatory tariffing regime.[26] Moreover, with carriers only permitted, but not required, to file tariffs, a comprehensive, centrally-located collection of rate information will simply not exist.[27] In addition, a one-day filing regime simply does not provide the framework for the type of advance-notice price signaling necessary for tacit collusion to operate.[28]

A permissive detariffing regime would engender none of the costs that are associated with the Commission's mandatory forbearance policy, would achieve

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25 Second Report and Order, ¶ 61.

Frontier demonstrated above that the other concerns identified by the Commission -- reliance on the filed rate doctrine and the ability to limit liability -- are largely illusory. *See supra* at 6-7.

26 Second Report, ¶ 61 ("[w]e believe that tacit price coordination for interstate, domestic, interexchange services, *to the extent that it exists*, will be more difficult if we eliminate tariffs. . . .") (emphasis added); *see also id.*, ¶ 23.

27 *See id.*

The Commission's attempt to discount the lack of complete information that a permissive detariffing regime would facilitate is unavailing. The fact that some information may be available is simply not conducive to price signaling. Competitors would not know with certainty that a filed tariff, in fact, contained all of the rates at which a carrier was offering service. The fact that *some* rate information may be available in one location is not logically related to the Commission's concerns.

28 Even if it did, the same information contained in tariff filings is also routinely available through advertising. Moreover, to the extent that this concern is realistic, the Commission could better address it by permitting carriers to tariff their basic terms and conditions -- but not the rates -- under which they offer service.

the benefits that the Commission had identified and, at the same time, would promote certainty and stability in the carrier-customer relationship.

Conclusion

For the foregoing reasons, the Commission should reconsider its Second Report and Order and, upon reconsideration, adopt a permissive -- rather than a mandatory -- forbearance policy.

Respectfully submitted,

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December 20, 1996